

ESTTA Tracking number: **ESTTA478295**

Filing date: **06/15/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	First Quality Enterprises, Inc.
Granted to Date of previous extension	06/17/2012
Address	80 Cuttermill Road, Suite 500 Great Neck, NY 11021 UNITED STATES
Attorney information	Holly Pekowsky, Esq. AMSTER, ROTHSTEIN & EBENSTEIN LLP 90 Park Avenue New York, NY 10016 UNITED STATES ptodocket@arelaw.com

### Applicant Information

Application No	85375488	Publication date	12/20/2011
Opposition Filing Date	06/15/2012	Opposition Period Ends	06/17/2012
Applicant	M & Q IP Leasing, Inc. Suite 1300 1105 N. Market Street Wilmington, DE 19801 UNITED STATES		

### Goods/Services Affected by Opposition

Class 016. First Use: 2011/05/20 First Use In Commerce: 2011/05/20  
All goods and services in the class are opposed, namely: Plastic film sold in bag form for use in cooking foods

### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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### Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2390759	Application Date	03/04/1998
Registration Date	10/03/2000	Foreign Priority Date	NONE
Word Mark	FIRST QUALITY		

Design Mark	<b>FIRST QUALITY</b>
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 1990/03/31 First Use In Commerce: 1990/03/31 adult incontinence products, namely, disposable briefs and diapers and sanitary pads Class 016. First use: First Use: 1990/03/31 First Use In Commerce: 1990/03/31 disposable diapers, sanitary pads and briefs

U.S. Registration No.	3224045	Application Date	07/15/2005
Registration Date	04/03/2007	Foreign Priority Date	NONE
Word Mark	FIRST QUALITY		
Design Mark	<b>FIRST QUALITY</b>		
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1993/08/01 First Use In Commerce: 1993/08/01 Sanitary products for incontinence, namely, disposable pre-moistened washcloths comprised of non-woven fabric		

U.S. Registration No.	3600103	Application Date	07/08/2004
Registration Date	03/31/2009	Foreign Priority Date	NONE
Word Mark	FIRST QUALITY		
Design Mark	<b>FIRST QUALITY</b>		
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 2008/02/28 First Use In Commerce: 2008/02/28 toilet tissues		

U.S. Registration No.	3628922	Application Date	05/23/2006
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Registration Date	05/26/2009	Foreign Priority Date	NONE
Word Mark	FIRST QUALITY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2009/02/18 First Use In Commerce: 2009/02/18 Bottled water		

U.S. Registration No.	4091210	Application Date	04/25/2007
Registration Date	01/24/2012	Foreign Priority Date	NONE
Word Mark	FIRST QUALITY		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 003. First use: First Use: 1993/08/01 First Use In Commerce: 1993/08/01 adult disposable wet wipes impregnated with chemicals or compounds for personal hygiene; non-medicated baby wipes; adult pre-moistened hygienic cleansing wipes</p> <p>Class 005. First use: First Use: 1990/03/30 First Use In Commerce: 1990/03/30 adult incontinence products, namely, briefs, diapers, undergarments, pad and pants, adult wet sanitizing wipes, shields for male and female undergarments, incontinence pads, male guards made from non-woven fabric and worn on the body and, panty liners</p> <p>Class 010. First use: First Use: 1990/03/30 First Use In Commerce: 1990/03/30 underpads, namely, incontinence bed pads</p> <p>Class 016. First use: First Use: 1990/03/30 First Use In Commerce: 1990/03/30 disposable baby diapers</p>		

Attachments	75444356#TMSN.gif ( 1 page )( bytes ) 78671087#TMSN.jpeg ( 1 page )( bytes ) 78447840#TMSN.jpeg ( 1 page )( bytes ) 78890373#TMSN.jpeg ( 1 page )( bytes ) 77165079#TMSN.jpeg ( 1 page )( bytes ) Notice of Opposition - FQE v. M&Q.pdf ( 13 pages )(403018 bytes )
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## Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Overnight Courier on this date.

Signature	/Holly Pekowsky/
Name	Holly Pekowsky, Esq.
Date	06/15/2012

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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FIRST QUALITY ENTERPRISES, INC.,	:	
	:	Opposition No.
Opposer,	:	
	:	<b>NOTICE OF OPPOSITION</b>
v.	:	
	:	
M & Q IP LEASING, INC.,	:	
	:	
Applicant.	:	
----- x		

In the matter of U.S. Trademark Application Serial No. 85/375,488 filed by M & Q IP Leasing, Inc. ("Applicant") on July 19, 2011 and published for opposition in the December 20, 2011 issue of the Official Gazette of the United States Patent and Trademark Office for the mark FIRST QUALITY (the "Accused Mark") in connection with plastic film sold in bag form for use in cooking foods, alleging use since May 20, 2011 (the "Subject Application").

As grounds for opposition of the Subject Application, Opposer First Quality Enterprises, Inc. ("Opposer"), by and through its attorneys, alleges as follows:

1. Opposer, a Pennsylvania corporation maintaining a place of business at 80 Cuttermill Road, Suite 500, Great Neck, New York 11021, believes that it will be damaged by the registration of the Subject Application and hereby opposes the same.
2. Opposer owns the well known corporate name, trade name, trademark and service mark FIRST QUALITY in connection with the manufacture and sale of a wide variety of paper and non-woven products, incontinence and feminine hygiene products, baby diapers and training pants, wipes, non-woven fabrics, toilet tissue and paper towels, as well as bottled water (the "FIRST QUALITY Mark").
3. The FIRST QUALITY Mark has been in use for over twenty years, since 1990.

4. Opposer owns several U.S. Registrations for its FIRST QUALITY Mark, including:

- A. Registration No. 2,390,759 for FIRST QUALITY for adult incontinence products, namely, disposable briefs and diapers and sanitary pads; disposable diapers, sanitary pads and briefs;
- B. Registration No. 3,224,045 for FIRST QUALITY for sanitary products for incontinence, namely, disposable pre-moistened washcloths comprised of non-woven fabric;
- C. Registration No. 3,600,103 for FIRST QUALITY for toilet tissues;
- D. Registration No. 3,628,922 for FIRST QUALITY for bottled water; and
- E. Registration No. 4,091,210 for FIRST QUALITY for adult disposable wet wipes impregnated with chemicals or compounds for personal hygiene; non-medicated baby wipes; adult pre-moistened hygienic cleansing wipes; adult incontinence products, namely, briefs, diapers, undergarments, pad and pants, adult wet sanitizing wipes, shields for male and female undergarments, incontinence pads, male guards made from non-woven fabric and worn on the body and, panty liners; underpads, namely, incontinence bed pads; and disposable baby diapers.

Copies of these Registrations are annexed hereto collectively as Exhibit A.

5. Opposer also owns a tag line incorporating the FIRST QUALITY Mark, *i.e.*, AT FIRST QUALITY WE PUT QUALITY OF LIFE FIRST (the "FIRST QUALITY Tag Line"). The FIRST QUALITY Tag Line is the subject of Registration No. 2,867,822 for adult incontinence products, namely, disposable briefs, diapers and sanitary pads and tampons. A copy of this Registration is annexed hereto as Exhibit B.

6. Products and services provided under the FIRST QUALITY Mark and the FIRST QUALITY Tag Line have been advertised to the trade and purchasing public and have been the subject of unsolicited media attention.

7. The FIRST QUALITY Mark and the FIRST QUALITY Tag Line, by reason of the high quality of products and services provided under the Mark and Tag Line, have come to

be known to the purchasing public as representing products and services of the highest quality. As a result thereof, the FIRST QUALITY Mark and the FIRST QUALITY Tag Line and the goodwill associated therewith are of inestimable value to Opposer.

8. Opposer advertises its products and services on its website, firstquality.com, and its products are also advertised and offered for sale on third party websites.

9. By virtue of the renown acquired by the FIRST QUALITY Mark and the FIRST QUALITY Tag Line, coupled with Opposer's reputation for high quality products and services, the FIRST QUALITY Mark and the FIRST QUALITY Tag Line have acquired secondary meaning and have developed an enviable reputation in the minds of the purchasing public.

10. Long after Opposer commenced use of and applied to register the FIRST QUALITY Mark and the FIRST QUALITY Tag Line, and long after the Mark and Tag Line became well known to consumers, Applicant applied to register the Accused Mark.

11. The Accused Mark is confusingly similar to the FIRST QUALITY Mark and the FIRST QUALITY Tag Line. The marks are identical and the goods/services are clearly related.

12. Based on the foregoing, the use and/or registration of the Accused Mark by Applicant is likely to cause confusion and mistake in the minds of the purchasing public, and, in particular, will, upon information and belief, tend to falsely create the impression that the products sold under the Accused Mark are authorized, sponsored, or approved by Opposer when, in fact, they are not.

13. Accordingly, it is Opposer's belief that if Applicant is granted registration of the Application opposed herein, Opposer will suffer irreparable harm and damage.

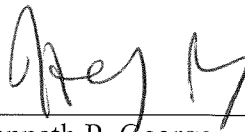
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**WHEREFORE**, Opposer respectfully requests that the mark shown in U.S. Trademark Application Serial No. 85/375,488 be refused registration and that this Opposition be sustained.

Respectfully submitted,

AMSTER, ROTHSTEIN & EBENSTEIN LLP  
Attorneys for Opposer  
First Quality Enterprises, Inc.  
90 Park Avenue  
New York, New York 10016  
(212) 336-8000

Dated: New York, New York  
June 15, 2012

By:   
Kenneth P. George  
Holly Pekowsky



**CERTIFICATE OF SERVICE**

I hereby certify that true and complete copy of the foregoing NOTICE OF OPPOSITION has been served on Applicant by delivering said copy via Federal Express, overnight delivery, prepaid to Applicant's attorney of record, as follows:

Tristram R. Fall, III, Esq.  
Fox Rothschild  
2000 Market St., 20th Floor  
Philadelphia, PA 19103-3222

A handwritten signature in dark ink, appearing to read "Holly Pekowsky", is written over a horizontal line.

Holly Pekowsky

Dated: June 15, 2012  
New York, New York

# **EXHIBIT A**

Int. Cls.: 5 and 16

Prior U.S. Cls.: 2, 5, 6, 18, 22, 23, 29, 37, 38,  
44, 46, 50, 51 and 52

Reg. No. 2,390,759

**United States Patent and Trademark Office**

Registered Oct. 3, 2000

**TRADEMARK  
PRINCIPAL REGISTER**

**FIRST QUALITY**

FIRST QUALITY PRODUCTS, INC. (NEW YORK  
CORPORATION)  
80 CUTTERMILL ROAD  
SUITE 409  
GREAT NECK, NY 11021

FOR: ADULT INCONTINENCE PRODUCTS,  
NAMELY, DISPOSABLE BRIEFS AND DIAPERS  
AND SANITARY PADS , IN CLASS 5 (U.S. CLS.  
6, 18, 44, 46, 51 AND 52).

FIRST USE 3-31-1990; IN COMMERCE 3-31-1990.  
FOR: DISPOSABLE DIAPERS, SANITARY PADS  
AND BRIEFS, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23,  
29, 37, 38 AND 50).

FIRST USE 3-31-1990; IN COMMERCE 3-31-1990.

SER. NO. 75-444,356, FILED 3-4-1998.

LINDA MICKLEBURGH, EXAMINING ATTORNEY

Int. Cl.: 5

Prior U.S. Cls.: 6, 18, 44, 46, 51 and 52

**United States Patent and Trademark Office**

**Reg. No. 3,224,045**

Registered Apr. 3, 2007

**TRADEMARK  
PRINCIPAL REGISTER**

**FIRST QUALITY**

FIRST QUALITY PRODUCTS, INC. (NEW YORK  
CORPORATION)  
SUITE 500  
80 CUTTERMILL ROAD  
GREAT NECK, NY 11021

FOR: SANITARY PRODUCTS FOR INCONTI-  
NENCE, NAMELY, DISPOSABLE PRE-MOISTENED  
WASHCLOTHS COMPRISED OF NON-WOVEN  
FABRIC, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51  
AND 52).

FIRST USE 8-1-1993; IN COMMERCE 8-1-1993.

THE MARK CONSISTS OF STANDARD CHAR-  
ACTERS WITHOUT CLAIM TO ANY PARTICULAR  
FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NO. 2,390,759.

SER. NO. 78-671,087, FILED 7-15-2005.

JASON TURNER, EXAMINING ATTORNEY

Int. Cl.: 16

Prior U.S. Cls.: 2, 5, 22, 23, 29, 37, 38 and 50

Reg. No. 3,600,103

United States Patent and Trademark Office

Registered Mar. 31, 2009

Corrected

OG Date Jan. 12, 2010

TRADEMARK  
PRINCIPAL REGISTER

FIRST QUALITY

FIRST QUALITY ENTERPRISES, INC.  
(PENNSYLVANIA CORPORATION)  
80 CUTTERMILL ROAD  
GREAT NECK, NY 11021

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

FOR: TOILET TISSUES, IN CLASS 16  
(U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 2-28-2008; IN COMMERCE  
2-28-2008.

SER. NO. 78-447,840, FILED 7-8-2004.

*In testimony whereof I have hereunto set my hand  
and caused the seal of The Patent and Trademark  
Office to be affixed on Jan. 12, 2010.*

Int. Cl.: 32

Prior U.S. Cls.: 45, 46, and 48

**United States Patent and Trademark Office**

**Reg. No. 3,628,922**

Registered May 26, 2009

**TRADEMARK  
PRINCIPAL REGISTER**

**FIRST QUALITY**

FIRST QUALITY ENTERPRISES, INC. (PENNSYLVANIA CORPORATION)  
80 CUTTERMILL ROAD  
GREAT NECK, NY 11021

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

FOR: BOTTLED WATER, IN CLASS 32 (U.S. CLS. 45, 46 AND 48).

SN 78-890,373, FILED 5-23-2006.

FIRST USE 2-18-2009; IN COMMERCE 2-18-2009.

JOHN DALIER, EXAMINING ATTORNEY

# United States of America

United States Patent and Trademark Office

## FIRST QUALITY

**Reg. No. 4,091,210**

**Registered Jan. 24, 2012**

**Int. Cls.: 3, 5, 10, and 16**

**TRADEMARK**

**PRINCIPAL REGISTER**

FIRST QUALITY ENTERPRISES, INC. (PENNSYLVANIA CORPORATION)  
80 CUTTERMILL ROAD  
GREAT NECK, NY 11021

FOR: ADULT DISPOSABLE WET WIPES IMPREGNATED WITH CHEMICALS OR COMPOUNDS FOR PERSONAL HYGIENE; NON-MEDICATED BABY WIPES; ADULT PRE-MOISTENED HYGIENIC CLEANSING WIPES, IN CLASS 3 (U.S. CLS. 1, 4, 6, 50, 51 AND 52).

FIRST USE 8-1-1993; IN COMMERCE 8-1-1993.

FOR: ADULT INCONTINENCE PRODUCTS, NAMELY, BRIEFS, DIAPERS, UNDERGARMENTS, PAD AND PANTS, ADULT WET SANITIZING WIPES, SHIELDS FOR MALE AND FEMALE UNDERGARMENTS, INCONTINENCE PADS, MALE GUARDS MADE FROM NON-WOVEN FABRIC AND WORN ON THE BODY AND, PANTY LINERS, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

FIRST USE 3-30-1990; IN COMMERCE 3-30-1990.

FOR: UNDERPADS, NAMELY, INCONTINENCE BED PADS, IN CLASS 10 (U.S. CLS. 26, 39 AND 44).

FIRST USE 3-30-1990; IN COMMERCE 3-30-1990.

FOR: DISPOSABLE BABY DIAPERS, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 3-30-1990; IN COMMERCE 3-30-1990.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SN 77-165,079, FILED 4-25-2007.

LANA PHAM, EXAMINING ATTORNEY



*David J. Kappas*

Director of the United States Patent and Trademark Office

# **EXHIBIT B**



Int. Cl.: 5

Prior U.S. Cls.: 6, 18, 44, 46, 51, and 52

**United States Patent and Trademark Office**

**Reg. No. 2,867,822**

Registered July 27, 2004

**TRADEMARK  
PRINCIPAL REGISTER**

**AT FIRST QUALITY WE PUT QUALITY OF LIFE FIRST**

FIRST QUALITY PRODUCTS, INC. (NEW YORK  
CORPORATION)  
80 CUTTERMILL ROAD  
SUITE 409  
GREAT NECK, NY 11021

FIRST USE 3-23-2004; IN COMMERCE 3-23-2004.

OWNER OF U.S. REG. NO. 2,390,759.

FOR: ADULT INCONTINENCE PRODUCTS,  
NAMELY, DISPOSABLE BRIEFS, DIAPERS AND  
SANITARY PADS AND TAMPONS , IN CLASS 5  
(U.S. CLS. 6, 18, 44, 46, 51 AND 52).

SN 78-159,144, FILED 8-29-2002.

MICHELE SWAIN, EXAMINING ATTORNEY